

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ORANGEBURG DIVISION

Michael Woodruff,)
vs.)
Plaintiff,) Civil Action No.: 5:12-344-RMG
vs.)
William Byars, Director, et al,)
Defendants.)

)

ORDER

Plaintiff, proceeding pro se and in forma pauperis, brought this action alleging violations of his constitutional rights pursuant to 42 U.S.C. § 1983. As a result, this case was automatically referred to United States Magistrate Judge Kaymani D. West, for all pretrial proceedings pursuant to the provisions of 28 U.S.C. § 636(b) and Local Rule 73.02(B)(2), D.S.C. On April 19, 2012, Defendants filed a motion to dismiss. (Dkt. No. 33). On April 19, 2012, the Magistrate Judge also issued a *Roseboro* Order directing Plaintiff to respond to Defendants' motion within 34 days, and instructing Plaintiff that the Court may grant Defendants' motion to dismiss if Plaintiff did not respond adequately by the deadline. (Dkt. No. 35).

Plaintiff then filed a request that the Court send him a copy of his Complaint (Dkt. No. 37) and a second letter alleging that he is being hindered from moving forward with his civil action by the prison staff, that he is being retaliated against and requesting that he be moved "back to the upstate" to a different institution. (Dkt. No. 39). On June 1, 2012, the Magistrate Judge ordered that Plaintiff advise the Court whether he wished to continue with the case by June 14, 2012. (Dkt. No. 42). The Magistrate Judge advised that while Plaintiff had filed various requests with the Court, if he failed to respond adequately to Defendants' motion, the Court may grant their motion, and dismiss Plaintiff's case for failure to prosecute pursuant to Rule 41(b) of

the Federal Rules of Civil Procedure. Notwithstanding these instructions, Plaintiff has failed to file a response indicating whether he wishes to continue with this action.

The Magistrate Judge recommended dismissing Plaintiff's action for failure to prosecute due to Plaintiff's failure to file an opposition to Defendants' motion to dismiss. (Dkt. No. 51). Plaintiff has not filed any objections to the Magistrate Judge's Report and Recommendation. Upon reviewing the record, this Court agrees with, and wholly adopts, the findings and recommendations of the Magistrate Judge.

Discussion

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and responsibility for making a final determination remains with this Court. *Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). This Court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objection is made, and this Court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C. § 636(b)(1). This Court may also "receive further evidence or recommit the matter to the magistrate with instructions." *Id.* Where, as in this case, the Plaintiff fails to file any specific objections, the Magistrate Judge's conclusions are reviewed only for clear error, *see Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005), and this Court is not required to give any explanation for adopting the recommendation of the Magistrate. *Camby v. Davis*, 718 F.2d 198 (4th Cir. 1983).

Here, the Magistrate Judge twice instructed Plaintiff of the importance of filing a response to the motion to dismiss. (Dkt. Nos. 35 & 42). Nevertheless, Plaintiff failed to adequately respond. Further, Plaintiff has not objected to the Magistrate Judge's recommendation that this action be dismissed for failure to prosecute. (Dkt. No. 51). As a

result, this Court adopts the Magistrate Judge's Report and Recommendation as the order of this Court and incorporates it herein.

Conclusion

Accordingly, the Complaint is **dismissed** with prejudice for failure to prosecute pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. Any pending motions are terminated in light of this Order.

AND IT IS SO ORDERED.



Richard Mark Gergel
United States District Court Judge

July 12, 2012
Charleston, South Carolina